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**Introduced by Senator Morrow**

February 25, 2000

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An act to amend Section 3294 of the Civil Code, relating to punitive damages.

LEGISLATIVE COUNSEL'S DIGEST

SB 2056, as introduced, Morrow. Punitive damages.

Existing law provides that in an action for the breach of an obligation not arising from contract, the plaintiff may recover punitive damages in addition to actual damages. In those cases, the plaintiff may recover punitive damages where it has been proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.

The bill would restrict in any action filed on or after January 1, 2001, the pleading or awarding of punitive damages where punitive damages have awarded in another state or federal court for the same conduct, as specified. The bill would also require punitive damage awards in these cases to be reduced by the amount of prior punitive damage awards.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds as follows:
- 2 (a) There is no adequate mechanism to determine
- 3 when multiple awards of punitive damages against a
- 4 defendant for the same course of conduct may exceed the

1 amount necessary to punish and deter the conduct at  
2 issue.

3 (b) Multiple awards of punitive damages beyond that  
4 amount may unfairly exhaust funds which would  
5 otherwise be available to pay compensatory damages to  
6 deserving claimants.

7 (c) Multiple awards of punitive damages beyond the  
8 amount needed to punish and deter the conduct at issue  
9 may result in needless job losses, worker dislocation, loss  
10 of value to pension funds and other investors, and  
11 bankruptcies.

12 (d) There is need for a mechanism to review punitive  
13 damage awards in multiple actions for the same course of  
14 conduct to encourage settlement of claims and to avoid  
15 disproportionate punishment and inequitable allocation  
16 of resources available to compensate claimants.

17 SEC. 2. Section 3294 of the Civil Code is amended to  
18 read:

19 3294. (a) In an action for the breach of an obligation  
20 not arising from contract, where it is proven by clear and  
21 convincing evidence that the defendant has been guilty  
22 of oppression, fraud, or malice, the plaintiff, in addition to  
23 the actual damages, may recover damages for the sake of  
24 example and by way of punishing the defendant.

25 (b) An employer shall not be liable for damages  
26 pursuant to subdivision (a), based upon acts of an  
27 employee of the employer, unless the employer had  
28 advance knowledge of the unfitness of the employee and  
29 employed him or her with a conscious disregard of the  
30 rights or safety of others or authorized or ratified the  
31 wrongful conduct for which the damages are awarded or  
32 was personally guilty of oppression, fraud, or malice. With  
33 respect to a corporate employer, the advance knowledge  
34 and conscious disregard, authorization, ratification or act  
35 of oppression, fraud, or malice must be on the part of an  
36 officer, director, or managing agent of the corporation.

37 (c) As used in this section, the following definitions  
38 shall apply:

39 (1) "Malice" means conduct which is intended by the  
40 defendant to cause injury to the plaintiff or despicable



1 conduct which is carried on by the defendant with a  
2 willful and conscious disregard of the rights or safety of  
3 others.

4 (2) “Oppression” means despicable conduct that  
5 subjects a person to cruel and unjust hardship in conscious  
6 disregard of that person’s rights.

7 (3) “Fraud” means an intentional misrepresentation,  
8 deceit, or concealment of a material fact known to the  
9 defendant with the intention on the part of the defendant  
10 of thereby depriving a person of property or legal rights  
11 or otherwise causing injury.

12 (d) Damages may be recovered pursuant to this  
13 section in an action pursuant to Chapter 4 (commencing  
14 with Section 377.10) of Title 3 of Part 2 of the Code of Civil  
15 Procedure based upon a death which resulted from a  
16 homicide for which the defendant has been convicted of  
17 a felony, whether or not the decedent died instantly or  
18 survived the fatal injury for some period of time. The  
19 procedures for joinder and consolidation contained in  
20 Section 377.62 of the Code of Civil Procedure shall apply  
21 to prevent multiple recoveries of punitive or exemplary  
22 damages based upon the same wrongful act.

23 (e) *In any action filed on or after January 1, 2001,*  
24 *involving the same act or course of conduct of a*  
25 *defendant as to which punitive or exemplary damages*  
26 *have already been awarded in a final judgment in any*  
27 *state or federal court, punitive or exemplary damages*  
28 *may not be pleaded unless the court determines by clear*  
29 *and convincing evidence in a pre-trial hearing that the*  
30 *plaintiff will offer new and substantial evidence of*  
31 *additional behavior on the part of the defendant, not*  
32 *disclosed in the prior actions, other than the injury or loss*  
33 *for which plaintiff seeks compensatory damages, and may*  
34 *not be awarded unless the court determines by clear and*  
35 *convincing evidence in a pre-trial hearing that the total*  
36 *amount of prior punitive or exemplary damage awards*  
37 *was clearly insufficient to punish the defendant’s*  
38 *behavior and to deter the defendant and others from*  
39 *similar behavior in the future. In either event, the court*  
40 *shall make specific findings of fact on the record to*

1 *support its conclusion and shall prohibit disclosure to the*  
2 *jury of the court's determination under this subdivision.*

3 *(f) If punitive or exemplary damages are awarded in*  
4 *an action described in subdivision (e), the court shall*  
5 *reduce the award by the sum of the punitive or*  
6 *exemplary damage awards previously paid by the*  
7 *defendant in prior actions in any state or federal court*  
8 *based on the same act or course of conduct.*

9 *(g) The amendments to this section made by Chapter*  
10 *1498 of the Statutes of 1987 apply to all actions in which*  
11 *the initial trial has not commenced prior to January 1,*  
12 *1988.*

